XI-HC—78

23

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

CRIMINAL APPEAL NO.1712/2000

APPELLANTS

1. Naveen Dutt, S/o Santh Ram, alias Pita Shumba Sarthi, aged about 25 years.
2. Santh Ram, alias Pita Shumba Sarthi, S/o Parshuram Sarthi, aged about 60 years.

All are resident of Village Padigaon, Thana Pusor, Distt. Raigarh (M.P.)

Vs

RESPONDENT State of M.P. Distt. Magistrate, Pusor, Distt. Raigarh (M.P.)

Present:
Mr. R.P. Tripathi, Advocate for the appellants.
Mr. U.K.S. Chandel, Panel Lawyer for the respondent-State.

ORAL JUDGMENT

(2nd August, 2007)

Per Dhirendra Mishra, J:

This appeal is directed against the judgment of conviction and order of sentence dated 9th June, 2000 passed by learned 2nd Additional Sessions Judge, Raigarh in Sessions Trial No.73/99 whereby learned Additional Sessions Judge has convicted the appellants under Sections 307/34, 294, 506-II (B) of the IPC and sentenced each of them to undergo R.I. for 10 years and to pay a fine

Q4

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

of Rs.500/-, in default of payment of fine to further undergo R.I. for two months; R.I. for 2 months & R.I. for 2 years respectively.

Case of the prosecution, in brief, is that on 24.1.1999 at about 12.15 p.m. complainant Ravishankar Choudhary lodged a First Information Report in the Police Station Pusor mentioning therein that he had gone to his borewell at about 11.00 a.m., at that time accused persons were digging foundation for construction of a house over the abadi land, which was allotted to them. Accused Naveen Dut started abusing him with filthy language and stated that he shall not allow him to go from this way. When the complainant protested that he is required this way to go to his borewel, he was again abused and threatened of his life. Thereafter, both the accused persons chased him to beat, at that time Parbudi (PW-2), Ghurau & Bhawani Shankar (PW-3) were present in the tank, they came there and separated them. In the meanwhile, accused Naveen brought lathi from his house and assaulted the complainant on his head as a result of which he fell down on the ground and became unconscious. He was taken to the hospital. The complainant lodged the report in Police Station Pusor. The complainant was sent for medical examination to Community Health Centre, Pusor where Dr. M.K. Patel (PW-4) examined him and found one lacerated wound on the occipital region over the head in the size of 4 x ½cm. The complainant was admitted in the hospital and he

(25)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 3 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

was advised for X-ray and on radiological examination one fracture was found on the right parietal region. MLC report of the doctor is Ex.P-9. The doctor has opined that injury present over the head of complainant was sufficient to cause death in the ordinary course of nature.

After completing the investigation, charge sheet was filed against the accused persons under Sections 294, 506-B, 307/34 of the IPC and after committal learned trial court framed the charges under aforesaid sections. The prosecution in order to establish the charges against the accused persons examined 8 witnesses. Statements of accused persons were recorded under Section 313 of Cr.P.C. in which they pleaded innocence & false implication and stated that they were allotted abadi land under Indira Awaas Yozna, quarrel was only in relation to the allotment and the false report has been lodged. Accused persons have examined one Mahabir Pradhan (DW-1) in their defence.

Learned Additional Sessions Judge after hearing the arguments of learned counsel for the respective parties, convicted and sentenced the accused/appellants, as mentioned hereinabove.

Learned counsel for the appellant submits that genesis of the offence has been deliberately suppressed, the quarrel, as it appears,

(26)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

occurred because of the construction by the appellants over the allotted abadi land. However, on the basis of partisan investigation the charge sheet has been filed that the accused persons obstructed the complainant from coming to his borewel and in that process the complainant was assaulted. It was further contended that complainant Ravishankar Choudhary has made material improvements in his deposition before the court as he has stated that appellant No.2-Santram caught hold of his hands and thereafter appellant No.1 assaulted him by lathi, though this version is missing in the FIR as well as in Diary statement of Ex.D-1. It was further argued that investigating officer has admitted this fact that accused Naveen Dut was sent for medical examination but his injury report has not been adduced in the evidence. It was also argued that if the version of the complainant is to be believed, then he was unconscious immediately after the incident, gained his consciousness only in the hospital and in that case FIR, allegedly lodged by him in the Police Station immediately after the incident becomes a suspicious document.

On the other hand, learned Panel Lawyer for the State submits that conviction is based on the testimony of injured complainant as also three other eyewitnesses who have stated specific role played by both the accused persons in assaulting the complainant. Version of the complainant and eyewitnesses is duly corroborated by the injury

XI-HC—78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक .....सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

report of Ex.P-9 as also X-ray, which has been proved by Dr. M.D. Joshi (PW-7). Injury was on the vital part of the head and as per radiological examination report occipital bone was found fractured.

I have heard Mr. R.P. Tripathi, Advocate for the appellants and Mr. U.K.S. Chandel, Panel Lawyer for the respondent/State.

Having heard learned counsel for the parties, I have perused the record including the impugned judgment.

So far as the conviction of the appellants under Section 307/34 of IPC is concerned, taking into consideration the injury report given by Dr. M.K. Patel (PW-4), considering that the complainant sustained fracture injury on the occipital region and further considering the weapon of offence, manner of assault and the part of the body on which assault was made, the finding of the trial court that the assault was made with an intention to cause death cannot be faulted and as such, the trial court has not committed any illegality or infirmity in convicting the appellants under Section 307/34 of IPC.

Now coming to the second question that whether the prosecution has been able to establish by reliable and trustworthy evidence the involvement of the appellants in the crime in question is concerned, PW-1 Ravishankar Choudhary has stated that on the date of incident he had gone to his borewel through his field, however, he

(28)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

was stopped by the accused persons saying that they shall not permit him to go through that way. When he protested that this is the only way to go to his borewel, he was abused by filthy language by accused persons and he was also threatened that they shall murder him. In the meanwhile, accused Naveen Dutt ran to his house, brought a lathi and when he was trying to flee from the place of occurrence, accused Santram caught hold of him and accused Naveen assaulted on his head by lathi as a result of which he became unconscious and fell down on the ground. He further stated that at the time of incident Panbudi (PW-2), Bhawani Shankar (PW-3) & Ghurau were present and thereafter he lodged the report.

In the cross examination of PW-1 Ravishankar omission in the diary statement of Ex.D-1 has been pointed out in which the fact that accused Santram caught hold of him is missing. Even in the FIR this fact is missing. However, Panbudi (PW-2), Bhawani Shankar (P.W.-3), Sahnu Ram (P.W.-5) have corroborated the statement of the complainant and stated that when Ravishankar was coming from his bore, accused Tumba (Santram) caught hold of him and accused Naveen Dutt assaulted him with lathi on his head as a result of which Ravishankar fell down.

Learned counsel for the appellant has tried to impeach the credibility of these witnesses by branding them as interested

27

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

witnesses, as they are servant and brother of the complainant. However, in the considered opinion of this Court the version given by these witnesses inspired confidence and therefore omission on the part of the complainant in mentioning the fact that he was caught by accused Santram at the time of incident looses its relevance in the light of the fact that other three witnesses have stated on oath about the said fact and corroborated the statement of complainant to that effect.

In the light of the aforesaid discussion, I am of the considered opinion that the judgment of the trial court is based on sound appreciation of evidence available on record and the same does not call for any interference.

Now coming to the question of sentence imposed on the appellants, learned counsel for the appellants submits that appellant Santram was 60 years old at the time of incident and therefore, while imposing the sentence the trial court ought to have considered the same.

In the result, the appeal filed by the appellants is partly allowed while maintaining their conviction under Sections 307/34, 294 & 506-II (B) of the IPC. However, their sentence under Section 307/34 is reduced to R.I. for 3 years in place of R.I. for 10 years. It is stated that appellant No.1-Naveen Dutt is in custody for last more than 7 years, thereby he has

XI-HC—78

(30)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
Roshan/-	already served the sentence imposed upon him, therefore, he be set at liberty forthwith if he is not required in any other case. However, appellant No.2-Santram is directed to surrender before the trial court in order to undergo the remaining sentence imposed upon him and his bail bonds are cancelled. **Sd/-** **Dhirendra Mishra** **Judge**	